



Canal &
River Trust

Keeping people, nature & history connected

31 October 2017

Eggborough CCGT Project Team
National Infrastructure Planning
Temple Quay House
2 The Square
Bristol
BS1 6PN

Our Ref RR-008
Your Ref EN010081

Dear Mr Richard Allen

**Application by Eggborough Power Limited for an Order Granting Development Consent for the Eggborough CCGT (Generating Station)
Written Representation on behalf of the Canal & River Trust and Response to the Examining Authority's first round of written questions of the Canal & River Trust**

The Canal & River Trust responded on 7th August 2017 to register and comment as an interested party for the Examination relating to the Eggborough CCGT Generating Station.

The Examining Authority's (ExA's) letter dated the 4th October 2017 has invited all interested parties to make further written representations on any matters concerning the application for the proposed development ('the Project').

The Trust wishes to take this opportunity to submit further written representations and respond to the ExA's first round of written questions that are directed at the Trust.

Written Representations

The Trust is Navigation Authority of the River Aire upstream of Chapel Haddlesey weir.

The Trust provided comments in relation to the Section 42 consultation in September 2016 and February 2017. In our response we highlighted that the alterations to the abstraction arrangements at the River Aire would occur, and that it was essential that the characteristics of such abstraction, including the impact on flow levels was fully considered, which could be reserved by condition in the DCO.

As navigation authority of the River Aire, we reminded the applicant that necessary consents would need to be obtained from the Trust for works on the Navigation. Such consents would address any temporary impacts on navigation safety during the works.

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In our response to register the Trust as an interested party for the Examination, we made submissions in relation to the proposed abstraction from the River Aire, where we are navigation authority, specifically with concern to Work No. 4 within the Draft Development Consent Order ("the Order") and the apparent acquisition of the Trust's property by compulsory acquisition.

Proposed abstraction from the River Aire

Alterations to the existing abstraction arrangements at the River Aire are proposed. Significant changes to the quantity and flow of water can impact upon navigational safety, whilst any new abstraction would also have a potential impact upon fish stocks without sufficient mitigation.

Changes to the flow of water at the abstraction point does need to be fully assessed to ensure that the new abstraction apparatus will not result in changes to the flows of water in the river that would be a hazard to navigation. This concerns the angle of flow and design of extraction apparatus as well as any changes to the rate of water flow.

We note that the Environmental Statement highlights that the volume of cooling water abstraction from the river Aire for the proposed development will be lower than for the existing coal-fired power station (paragraphs 4.2.27; 11.6.46), although a final determination on the cooling processes has yet to be made (4.2.29).

The Trust believe that the principle of lower abstraction rates should not result in a significant negative impact to navigational safety. However, this is subject to the final design of the abstraction apparatus, given that the angle of abstraction can have an impact on water flows, and the design and location of new abstraction apparatus at the river bank can create new hazards.

We therefore request that the exact details of abstraction, notably with regards to the angle of flow, are made a condition of any DCO so that the full impact can be judged, and that the Trust are included as a consultee within any such wording.

The Trust do manage fishing stocks on the River Aire, and there is a need to ensure that the new abstraction apparatus will not harm the biodiversity of the river, in line with the principles of paragraph 109 of the National Planning Policy Framework. This would include any significant impact upon river species. The Environmental Statement (paragraph 5.2.23) has identified the potential requirement for the installation of an eel screen, the requirement for which will be judged by the details upon the proposed abstraction rates. We welcome this inclusion, which is required to ensure that the impact on river species can be mitigated. We request that details the eel screening are made a condition of any DCO so that its implementation as necessary can be ensured.

The Trust welcome the applicant's inclusion of a draft condition requiring details of the abstraction equipment and eel screen to be provided within schedule 2, paragraph 5(6)(b) of the draft DCO, as part of the reserved details for Work No. 4. As navigation authority, the Trust would need to have an input into the details provided, however, to ensure that the impact on navigation is acceptable.

The existing draft DCO states that the details in Work No. 4 should be provided after consultation between the applicant and the Environment Agency and Marine Management Organisation. However, neither of these organisations will assess the impact upon navigation to ensure continued navigational safety. As a result, the Trust should also be included as an organisation to be consulted as part of the proposed condition at schedule 2, paragraph 5(6) of the draft DCO.

Proposed Construction works within the River Aire

Cofferdams are proposed to be installed temporarily to allow for construction of the new abstraction point (paragraph 5.2.24). Paragraph 5.2.27 of the Environmental Statement does identify the potential environmental impacts of the cofferdam and measures to limit the impact, which is welcomed.

The extent and location of cofferdams will have a direct impact upon navigational activities on the River, and there is a need to ensure that the cofferdams offer suitable protection for boaters, and that the impact of these on river flows can be managed. The Trust's input is crucial to ensure that the impact on river navigation can be fully assessed. The Trust wish for such measures to be fully detailed and provided via condition within the DCO prior to the commencement of works upon the cofferdams.

The Trust identify that the draft DCO includes a requirement in schedule 2, paragraph 5(6)(c) for details of the cofferdams (in terms of timing, phasing, and the extent to which they extend into the River Aire) to be provided prior to the commencement of development comprised in Work No. 4. It refers to the need for consultation with the Environment Agency and Marine Management Organisation. However, as navigation authority for the River Aire at the point of abstraction, we request that the Trust are also consulted as part of the requirements, as this is necessary to ensure that the impact of the cofferdams on navigation can be fully considered.

Protective Provisions

Given that the works to be undertaken have the potential to impact upon water flows, and the navigation of the River Aire, we request that the DCO includes provisions for the protection of the Trust. We note that the draft DCO includes protective provisions within schedule 12 for the protection of electricity, gas, water and sewerage undertakers; and for the protection of operators of electronic communications code networks. We request that protective provisions in relation to the Trust are included within Schedule 12. The Trust has standard provisions which have been included in a number of DCOs which have recently been confirmed.

Acknowledging the role of the Trust as navigation authority of the River Aire at the abstraction point, we also request that the Trust be included within the list of organisations within Schedule 2, section 1. In addition, we request that paragraph 5(6) of Schedule 2 is amended such that the Trust is included as an organisation to be consulted in respect of the details of the design of Work No. 4.

The applicant has provided to the Trust draft protective provisions. We attach to this representation revised protective provisions which include the amendments which the Trust considers necessary to protect its interests.

Examining Authority's Written Questions

CA 1.7 – Objection to Compulsory Acquisition

We refer to the Book of Reference and note that the Trust is listed as a Category 1 owner in respect of plots 230, 245, 255, 345 and 690. Following discussions with the applicant over the exact plots of land to be acquired, we can confirm that the Trust does not have any freehold interest over the parts of the River Aire that are intended to be compulsorily acquired. We understand that this information is to be corrected by the applicant.

As a result of the above, the Trust do not wish to make comments specifically with regards to the compulsory acquisition of land. Notwithstanding the fact that the Trust do not hold a proprietary interest in the affected land, the Trust do still possess certain statutory powers and responsibilities as Navigation Authority in relation to part of the River Aire which is included within the Order limits.

The Trust is willing to engage with the applicant to enter into an agreement in respect of the rights which the applicant requires to deliver the Project. In order to ensure that the construction works will not result in a danger to navigational safety, the Trust requests that any permissions given do not supersede the rights of the Trust to request that the construction works within the River Aire abide by the 'Code of Practice for Works affecting the Canal & River Trust'. The abidance with this code is vital to ensure that continued safe navigation can be assured during the works for the installation of replacement abstraction equipment next to the canal. This details measures including, but not restricted to, the installation of appropriate warning notices during the works, controls during the installation and removal of the cofferdam, and the assurance that the cofferdam installation will not be vulnerable to craft strike.

A Compulsory Acquisition of rights has the potential to bypass the need for the works to abide by the Code of Practice, which would mean that the Trust would be unable to carry out our statutory duty and responsibility to ensure the continued safety of navigational users during and after the works.

DCO 1.9 - Temporary suspension of public rights of navigation

As Navigation Authority, the Trust has a duty to promote and maintain access to the parts of the River Aire over which there are public rights of navigation. The Trust is concerned about the wording at articles 11(7)-11(9) which do not appear to provide any ability for the Trust to discuss with the applicant the proposals to temporarily suspend public rights of navigation and agree appropriate timescales and mitigation measures in respect of this. The ability to seek an agreement is vital to ensure that the Trust can carry out its statutory duties as Navigation Authority.

In particular, article 11(8) requires the Trust to issue a notice to mariners. This is in conflict with article 2(4) of the protective provisions which states that the powers in article 11 may only be exercised with the consent of the Trust. The Trust considers that the wording of articles 11(7)-11(9) should be re-worded to make clear that such powers are subject to the consent of the Trust being obtained pursuant to the protective provisions.

Yours Sincerely

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Enc. Draft Protective Provisions

wh18990920v1

PROTECTIVE PROVISIONS
For the protection of Canal and River Trust

Interpretation

1.—(1) For the protection of CRT the following provisions of this Part of this Schedule shall, unless otherwise agreed in writing between the undertaker and CRT, have effect.

(2) In this Part of this Schedule—

“construction”, in relation to any specified work or protective work, includes—

- (a) the execution and placing of that work; and
- (b) any relaying, renewal, or maintenance of that work as may be carried out; and “construct” and “constructed” have corresponding meanings;

“CRT” means the Canal & River Trust;

“CRT’s network” means CRT’s network of waterways;

“detriment” means any damage to the waterway or any other property of CRT caused by the presence of the authorised development and, without prejudice to the generality of that meaning, includes—

- (a) any obstruction of, or interference with, or hindrance or danger to, navigation or to any use of the waterway (including towing paths);
- (b) the erosion of the bed or banks of the waterway, or the impairment of the stability of any works, lands or premises forming part of the waterway;
- (c) the deposit of materials or the siltation of the waterway so as to damage the waterway;
- (d) the pollution of the waterway;
- (e) any significant alteration in the water level of the waterway, or significant interference with the supply of water thereto, or drainage of water therefrom;
- (f) any harm to the ecology of the waterway (including any adverse impact on any site of special scientific interest comprised in CRT’s network);
- (g) any interference with the exercise by any person of rights over CRT’s network;

“the engineer” means an engineer appointed by CRT for the purpose in question;

“plans” includes sections, designs, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction) and programmes;

“practical completion” means practical completion of all of the specified work notwithstanding that items which would ordinarily be considered snagging items remain outstanding, and the expression “practically complete” and “practically completed” shall be construed accordingly;

“protective work” means a work constructed under paragraph 5(5)(a);

“specified work” means so much of Work No 4 as is situated upon, across, under, over or within 15 metres of, or may in any way affect the waterway;;

“the waterway” means the Aire & Calder Navigation, and includes any works, lands or premises belonging to CRT, or under its management or control, and held or used by CRT in connection with that navigation.

Powers requiring CRT’s consent

2.—(1) The undertaker shall not in the exercise of the powers conferred by this Order obstruct or interfere with pedestrian or vehicular access to the waterway unless such obstruction or interference with such access is with the consent of CRT.

(2) The undertaker shall not exercise any power conferred by this Order to discharge water into the waterway under article 14 (discharge of water) or in any way interfere with the supply of water to or the drainage of water from the waterway unless such exercise is with the consent of CRT, save as to surface water discharge which will not require the consent of CRT.

(3) The undertaker shall not exercise the powers conferred by article 15 (authority to survey and investigate land) or section 11(3) of the 1965 Act, in relation to the waterway unless such exercise is with the consent of CRT.

(4) The undertaker shall not exercise the powers conferred by this Order to temporarily stop up streets or public rights of way under article 11 (temporary stopping up of streets, public rights of way and public rights of navigation), as applied by Schedule 6 (streets to be temporarily stopped up); Part 1 of Schedule 7 (public rights of way to be temporarily stopped up) and Part 2 of Schedule 7 (public rights of navigation to be

temporarily suspended) so as to divert any right of access to (or any right of navigation along) the waterway but such right of access may be diverted with the consent of CRT.

(5) The consent of CRT pursuant to sub-paragraphs (1) to (4) shall not be unreasonably withheld or delayed but may be given subject to reasonable terms and conditions which in the case of article 14 (discharge of water) may include conditions—

- (a) specifying the maximum velocity of the flow of water which may be discharged at right angles to the navigation at any time; and
- (b) authorising CRT on giving reasonable notice (except in an emergency, when CRT may require immediate suspension) to the undertaker to require the undertaker to suspend the discharge of water or reduce the flow of water where this is necessary by reason of any operational or environmental requirement of CRT, to the extent that any discharge of water by the undertaker is into the waterway; and
- (c) requiring the payment of such charges as are typically charged by the owner of the relevant waterway.

Fencing

3. Where so required by the engineer the undertaker shall, to the reasonable satisfaction of the engineer, fence off a specified work or a protective work or take such other steps as the engineer may require to be taken for the purpose of separating a specified work or a protective work from the waterway, whether on a temporary or permanent basis or both.

Survey of waterway

4.—(1) Before the commencement of the initial construction of any part of the specified works and again following practical completion of the specified works the undertaker shall bear the reasonable and proper cost of the carrying out by a qualified engineer (the “surveyor”), to be approved by CRT and the undertaker, of a survey including a dip-survey to measure the depth of the waterway (“the survey”) of so much of the waterway and of any land and existing works of the undertaker which may provide support for the waterway as will or may be affected by the specified works.

(2) For the purposes of the survey the undertaker shall—

- (a) on being given reasonable notice (save in case of emergency, when immediate access shall be afforded) afford reasonable facilities to the surveyor for access to the site of the specified works and to any land and existing works of the undertaker which may provide support for the waterway as will or may be affected by the specified works; and
- (b) supply the surveyor as soon as reasonably practicable with all such information as he may reasonably require and which the undertaker holds with regard to such existing works of the undertaker and to the specified works or the method of their construction.

(3) The reasonable costs of the survey shall include the costs of any dewatering or reduction of the water level of any part of the waterway (where reasonably required) which may be effected to facilitate the carrying out of the survey and the provisions of this Part of this Schedule shall apply with all necessary modifications to any such dewatering or reduction in the water level as though the same were specified works.

(4) Copies of the survey shall be provided to both CRT and the undertaker at no cost to CRT.

Approval of plans, protective works etc.

5.—(1) The undertaker shall before commencing construction of any specified work including any temporary works and before carrying out any works on the waterway or which affect the waterway supply to CRT proper and sufficient plans of that work and such further particulars available to it as CRT may within 14 days of the submission of the plans reasonably require for the approval of the engineer and shall not commence such construction of a specified work until plans of that work have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) shall not be unreasonably withheld or delayed, and if within 35 days after such plans (including any other particulars reasonably required under sub-paragraph (1)) have been supplied to CRT the engineer has not served:

- (i) notice of refusal of those plans; and
- (ii) the grounds for refusal upon of those plans,
the undertaker may serve upon the engineer a determination notice

(3) If

- (a) the undertaker has served a determination notice referred to in paragraph 5(2) and the period of 14 days from the date of service has expired; and
- (b) the engineer has not served upon the undertaker;
 - (i) notice of refusal of those plans; and
 - (ii) the grounds of refusalthe engineer is deemed to have approved the plans as submitted.

(4) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph 31(2), the Canal & River Trust gives notice to the undertaker that the Canal & River Trust desires itself to construct any part of a specified work which in the opinion of the engineer may or will cause any detriment in respect of Canal & River Trust property, then if the undertaker requires such part of such specified work to be constructed the Canal & River Trust must construct it with all reasonable dispatch on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision of the undertaker.

(5) When signifying approval of the plans the engineer may specify on land held or controlled by CRT or the undertaker and subject to such works being authorised by the order or being development permitted by an Act of Parliament or general development order made under the 1990 Act—

- (a) any protective work (whether temporary or permanent) which in the reasonable opinion of the engineer should be carried out before the commencement of a specified work to prevent detriment; and
- (b) such other requirements as may be reasonably necessary to prevent detriment; and such protective works shall be constructed by the undertaker or by CRT at the undertaker's request with all reasonable dispatch and the undertaker shall not commence the construction of a specified work until the engineer has notified the undertaker that the protective works have been completed to the engineer's reasonable satisfaction such consent not to be unreasonably withheld or delayed.

(6) The undertaker shall pay to CRT a capitalised sum representing the reasonably increased or additional cost of maintaining and, when necessary, renewing any works, including any permanent protective works provided under sub-paragraph (3) above, and of carrying out any additional dredging of the waterway reasonably necessitated by the exercise of any of the powers under this Order but if the cost of maintaining the waterway, or of works of renewal of the waterway, is reduced in consequence of any such works, a capitalised sum representing such reasonable saving shall be set off against any sum payable by the undertaker to CRT under this paragraph.

(7) In the event that the undertaker fails to complete the construction of, or part of, the specified works CRT may, if it is reasonably required in order to avoid detriment, serve on the undertaker a notice in writing requesting that construction be completed. Any notice served under this subparagraph shall state the works that are to be completed by the undertaker and lay out a reasonable timetable for the works' completion. If the undertaker fails to comply with this notice within 35 days, CRT may construct any of the specified works, or part of such works, (together with any adjoining works) in order to complete the construction of, or part

of, the specified works or make such works and the undertaker shall reimburse CRT all costs, fees, charges and expenses it has reasonably incurred in carrying out such works.

Design of works

6. Without prejudice to its obligations under the foregoing provisions of this Part of this Schedule the undertaker shall consult, collaborate and respond constructively to any reasonable approach, suggestion, proposal or initiative made by CRT on—

- (a) the design and appearance of the specified works, including the materials to be used for their construction; and
- (b) the environmental effects of those works (or any works authorised by this Order so far as such works may affect the waterway or the setting of the waterway); and shall have regard to such views as may be expressed by CRT to the extent that these accord with the requirements of the local planning authority in response to such consultation pursuant in particular to the requirements imposed on CRT by section 22 (general environmental and recreational duties) of the British Waterways Act 1995 and to the interest of CRT in preserving and enhancing the environment of its waterways.

Notice of works

7. The undertaker shall give to the engineer 30 days' notice of its intention to commence the construction of any of the specified or protective works, or, in the case of repair carried out in an emergency, such notice as may be reasonably practicable so that, in particular, CRT may where appropriate arrange for the publication of notices bringing those works to the attention of users of CRT's network.

Lighting

8. The undertaker shall provide and maintain at its own expense in the vicinity of the specified or protective works such temporary lighting and such signal lights for the control of navigation as the engineer may reasonably require during the construction [or failure] of the specified or protective works.

Construction of specified works

9.—(1) Any specified or protective works shall, when commenced, be constructed—

- (a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled as aforesaid and with any requirements made under paragraph 5 and paragraph 6;
- (b) under the supervision (if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little detriment as is reasonably practicable;
- (d) in such manner as to cause as little inconvenience as is reasonably practicable to CRT, its officers and agents and all other persons lawfully using the waterways, except to the extent that temporary obstruction has otherwise been agreed by CRT.
- (e) in such a manner so as to ensure that no materials are discharged or deposited into the waterway otherwise than in accordance with article 14 (discharge of water).

(2) Nothing in this Order shall authorise the undertaker to make or maintain any permanent works in or over the waterway so as to impede or prevent (whether by reducing the width of the waterway or otherwise) the passage of any vessel which is of a kind (as to its dimensions) for which CRT is required by section 105(1)(b) and (2) of the Transport Act 1968 to maintain the waterway.

(3) Following the completion of the construction of the specified works the undertaker shall restore the waterway to a condition no less satisfactory than its condition immediately prior to the commencement of those works unless otherwise agreed between the undertaker and CRT.

(4) In assessing whether the condition of the waterway is no less satisfactory than immediately prior to the works pursuant to sub-paragraph (3), CRT and the undertaker shall take account of any survey issued pursuant to paragraph 4 and any other information agreed between them pursuant to this Part [x] of this Schedule.

Prevention of pollution

10. The undertaker shall not in the course of constructing a specified work or a protective work or otherwise in connection therewith (or in connection with any works authorised by this order) do or permit anything which may result in the pollution of the waterway or the deposit of materials therein and shall take such steps as the engineer may reasonably require to avoid or make good any breach of its obligations under this paragraph.

Access to work – provision of information

11.—(1) The undertaker on being given reasonable notice shall—

- (a) at all reasonable times allow reasonable facilities to the engineer for access to a specified work during its construction; and
- (b) supply the engineer with all such information as the engineer may reasonably require with regard to a specified work or the method of constructing it.

(2) CRT on being given reasonable notice shall—

- (a) at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by CRT under this Part of this Schedule during their construction; and
- (b) supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them and the undertaker shall reimburse CRT's reasonable costs in relation to the supply of such information.

Alterations to the waterway

12.—(1) If during the construction of a specified work or a protective work or during a period of twenty four (24) months after the completion of those works any alterations or additions, either permanent or temporary, to the waterway are reasonably necessary in consequence of the construction of the specified work or the protective work in order to avoid detriment, and CRT gives to the undertaker reasonable notice of its intention to carry out such alterations or additions (which shall be specified in the notice), the undertaker shall pay to CRT the reasonable costs of those alterations or additions including, in respect of any such alterations or additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by CRT in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If the cost of maintaining, working or renewing the waterway is reduced in consequence of any such alterations or additions a capitalised sum representing such saving shall be set off against any sum payable by the undertaker to CRT under this paragraph.

Maintenance of works

13. If at any time after the completion of a specified work or a protective work, not being a work vested in CRT, CRT gives notice to the undertaker informing it that it reasonably considers that the state of maintenance of the work appears to be such that the work is causing or likely to cause detriment, the undertaker shall, on receipt of such notice, take such steps as may be reasonably necessary to put the work in such state of maintenance as not to cause such detriment.

Repayment of CRT's fees, etc.

14. The undertaker shall repay to CRT in accordance with CRT's Code of Practice for Works affecting the Canal and River Trust (as amended from time to time) all fees, costs, charges and expenses reasonably incurred by CRT—

- (a) in constructing any protective works under the provisions of paragraph 5(5)(a);
- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction or repair of a specified work and any protective works;
- (c) in respect of the employment during the construction of the specified works or any protective works of any inspectors, watchmen and other persons whom it shall be reasonably necessary to appoint for inspecting, watching and lighting any waterway and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of the specified works or any protective works;
- (d) in bringing the specified works or any protective works to the notice of users of CRT's network; and
- (e) in respect of any additional temporary lighting of the waterway in the vicinity of the specified works (or any other works authorised by this Order) being lighting made reasonably necessary by reason or in consequence of the construction or failure of such works.

Costs of alterations, etc.

15. Any additional expenses which CRT may reasonably incur in altering, reconstructing or maintaining the waterway under any powers existing at the date when this Order was made by reason of the existence of a specified work shall, provided that 56 days' notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to CRT.

Making good of detriment; compensation and indemnity, etc.

16.—(1) If any detriment shall be caused by the construction or failure of the specified works or the protective works if carried out by the undertaker, the undertaker (if so required by CRT) shall make good such detriment and shall pay to CRT all reasonable expenses to which CRT may be put, and compensation for any loss which CRT may sustain, in making good or otherwise by reason of the detriment.

(2) The undertaker shall be responsible for and make good to CRT all costs, charges, damages, expenses and losses not otherwise provided for in this Part of this Schedule which may be occasioned to and reasonably incurred by CRT—

- (a) by reason of the construction of a specified work or a protective work or the failure of such a work; or
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon the construction of a specified work or protective work; and subject to sub-paragraph (4) the undertaker shall effectively indemnify and hold harmless CRT from and against all claims and demands arising out of or in connection with any of the matters referred to in paragraphs (a) and (b).

(3) The fact that any act or thing may have been done by CRT on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision or in accordance with any directions or awards of an arbitrator shall not (if it was done without negligence on the part of CRT or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this paragraph.

(4) Nothing in sub-paragraph (2) shall impose any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the neglect or wilful default of CRT, its officers, servants, contractors or agents.

(5) CRT shall give the undertaker reasonable notice of any such claim or demand as aforesaid and no settlement or compromise of such a claim or demand shall be made without the prior consent of the undertaker.

Arbitration

17. Any difference arising between the undertaker and CRT under this Part of this Schedule (other than a difference as to the meaning or construction of this Part of this Schedule) shall be referred to and settled by arbitration in accordance with article 41 (arbitration) of this Order.

Capitalised sums

18. Any capitalised sum which is required to be paid under this Part of this Schedule shall be calculated by multiplying the cost of the maintenance or renewal works to the waterway necessitated as a result of the operation of the authorised development by the number of times that the maintenance or renewal works will be required during the operation of the authorised development